IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7650 of 1989
with
SPECIAL CIVIL APPLICATION NOS. 7652;7653;7654 &
7657 all of 1989.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI H PATEL
Versus
STATE OF GUJARAT

Appearance:
MR MUKUND M DESAI for Petitioner
Mr.I.M.Pandya, AGP for the respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Mukund Desai is appearing for the petitioner in this group of petitions. Learned Asstt. G.P. Mr. Pandya is appearing for the respondents

in this group of petitions.

In this group of petitions, common order passed by the Gujarat Revenue Tribunal in revision application No. 571 of 1987 to 580 of 1987 dated 28th February, 1989 has been challenged by the petitioner. The petitioner has also challenged the order passed by the tribunal in review application nos. 18 of 1989 to 27 of 1989 dated 23rd June, 1989 wherein the petitioner has sought review of the order dismissing revision application passed by the tribunal. These petitions were admitted by this court by issuing rule thereon on 25th October, 1989 and interim relief in terms of paragraph 15(C) was granted.

Brief facts of the present petitions are as under:

The petitioner has purchased the land in question at village Chiloda in the year 1981 and, thereafter, the Mamlatdar conducted inquiry under sec.84(C) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"for the sake of bravity) and passed order against the petitioner against which an appeal was preferred before the Prant Officer which also was dismissed by the Prant Officer and, thereafter, revision applications were filed by the petitioner before the Gujarat Revenue Tribunal challenging the orders passed by the authorities below. Before the revisional authority, the main contention raised by the petitioner was that the Mamlatdar and ALT who undertook the inquiries under section 84(C) had not heard the transferees nor had he recorded any evidence and the Prant officer was similarly in error in dismissing the appeal without appreciating such contentions. It was also the contention that the notices were not served to the parties interested in the subject matter.

In the present petitions, learned advocate Mr. Desai appearing for the petitioners has raised two questions as under:

(1) Whether the person who is an agriculturist in the State of Gujarat can purchase the agricultural lands at any place in the State of Gujarat ? In other words, whether such agriculturist is bound to purchase the agricultural lands within the meaning of section 63 of the Tenancy Act only within the radius of eight km from the land which he is holding ?

(2) Whether the Mamlatdar and ALT acting under

sec.84(C) of the Act would have jurisdiction to initiate the proceedings in respect of violation of section 63 of the Act when the person has purchased the land, cultivated the same for a period of about two years and has invested considerable amount for the improvement of the land which he has purchased?

In all these matters, inquiry which has been initiated by the Mamlatdar and ALT under section 84(C) of the Tenancy Act on the ground that Ramji Hirji either in his own name or in the name of some of his sons, had purchased various agricultural lands situated at village Chiloda or village Valad in Gandhinagar had in those proceedings passed orders to the effect that the transferee Ramjibhai Hirjibhai etc. were not agriculturists in terms of section 2(2) and 2(6) of the Act and as such,were not agriculturists and had purchased various pieces of agricultural lands without obtaining sanction of the collector under section 63 of the Act and thus the provisions of sec.63 were violated and the transfers were considered as invalid in the proceedings under section 84C of the Act. Therefore, the Mamlatdar had ordered that the land in question shall vest in the State free of all encumbrances unless the parties restore the lands to their original position within ninety days and gave intimation of the same within ninety days and then the land so vesting in the State Government shall be liable to be disposed of under the provisions of the Act. According to the petitioner, the petitioner is an agriculturist within the meaning of sec.2(2) of the Act. The petitioner is also cultivating the land in question personally as per section 2(6) of the Act. It is also the case of the petitioner that the petitioner is having the agricultural lands within the State of Gujarat and these facts were not in dispute before the authorities and, therefore, on the force of law applicable to the transaction in question, the petitioner was satisfying the requirement of section 63 of the Act and, therefore, the proceedings initiated against the petitioner was without the authority of law.

Before the tribunal, it was the main contention raised by the petitioner that the Mamlatdar and ALT who undertook the inquiries under sec. 84C had not heard the transferees nor had he recorded any evidence and the Prant Officer had similarly dismissed the appeals. The notices were not served by the Mamlatdar and ALT to the parties interested. The applicants are holding agricultural lands at village Muthia in Taluika Daskroi but this position has not been taken into account by the

lower authorities It was, in view of these contentions, prayed that the orders of the lower authorities be set aside.

The revisional authority has not considered properly the contentions which were raised by the petitioner in respect of unreasonable delay in initiating the proceedings under section 84(C) of the Tenancy Act. The Tribunal has not properly appreciated the fact that the petitioners are holding land as agriculturist in village Muthia, Taluka Daskroi Ahmedabad District. In case of Sheth Ranchhod Vanaji versus Harijan Lumba Dhana and others reported in 1986 GLH (UJ) 31, this court has referred to the decision in case of Devji Meghji Gangar and others versus Lalmiya Mosammmiya and another reported in 18 GLR page 515 and has observed that the concept of agriculturist is not a simple concept of cultivator of land whereever situate but it is implicit that the land must be within the State of Bombay. The second ingredient is also expressly specified that he must be personally cultivating such land. It becomes very clear from this decision that the view taken by the tribunal is consistent with the law laid down by this court. Therefore, if the petitioner is having the land in village Muthia, Taluka Daskroi, within the State of Gujarat, then, considering the provisions of section 2 sub clause (2), the petitioner is an agriculturist. However, this aspect has not been considered by the tribunal though the same was very specifically raised and pleaded by the petitioner before the tribunal. The question of unreasonable delay was also raised before the tribunal by the petitioner but that aspect was also not considered by the tribunal. Indisputably, sale deed was executed between the parties in the year 1981 and the Mamlatdar has initiated proceedings under section 84-C of the Act on 4th January, 1984 and 27.1.1984. Therefore, after the period of more than two years, such proceedings were initiated and, therefore, there was unreasonable delay in initiating the proceedings under section 84C of the Act which aspect has not been considered by the tribunal. This aspect has been recently considered by the apex court in case of Mohamad Kavi Mohamad Amin versus Fatmabai Ibrahim reported in (1997) 6 SCC page 71. The apex court has observed that while exercising the suo motu powers, the Mamlatdar should initiate the inquiry under section 84C within reasonable time. The apex court has also considered the decision of the State of Gujarat versus Patel Raghav Natha reported in 1969 (2) SCC page 187 and has also considered the case of Ram Chand versus Union of India reported in (1984) 1 SCC 44. In para 2 of the report, the apex court has observed as under:

"2. Although Mr.Bhasme, learned counsel appearing for the appellant took a stand that under section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. Bug according to him, even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time.In the present case, the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injury because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant, reliance was placed on a judgment of Justice S.B.Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1.3.1990 where in connection with section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patel Raghav Natha and in the case of Ram Chand versus Union of India has impressed that where no time limit is prescribed for exercise of a power under a Statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs."

In the present petition, the petitioner has been protected by this court by granting ad interim relief in terms of paragraph 15(C) of the petition on 25th October, 1989. It is the case of the petitioner that during the

intervening period, the petitioner has spent huge amount for development of the land and that the said lands is the sole source of livelihood of the petitioner because they are agriculturist maintaining the family on that basis. Therefore, this aspect is also required to be considered while considering the delay in initiation of the proceedings under section 84-C.

Therefore, in view of the settled legal position as per the decisions reported in 18 GLR page 515, AIR 1981 Bombay page 168, 1986 GLH (UJ) 31 page 37 and 1997 (6) SCC page 71, as per my opinion, the orders passed by the revisional authority in aforesaid revision applications on 28th February, 1989 as well as the orders passed in review applications arising from the aforesaid orders passed in the revision applications dated 23rd June, 1989 are required to be quashed and set aside since the tribunal has failed to examine the aspect of delay in initiation of the proceedings under section 84-C of the Act. The tribunal has also failed to examine the question in respect of the definition under section 2(2) as well as section 2(6) of the Tenancy Act. I am, therefore, of the opinion that the tribunal has committed gross error in law as well as in facts in passing the orders impugned herein. I am of the view that in the facts and circumstances of the case, the tribunal, without entering into other aspects of the matter, ought to have first appreciated the aspect of delay in initiation of the proceedings under section 84C of the Act and ought to have held that the action has been taken after unreasonable delay.

In this case, the petitioner has succeeded on the ground of unreasonable delay on the part of the respondent authorities in initiating the proceedings under section 84C of the Tenancy Act and, therefore, I am not entering into the merits of another aspects of the matter and this Court is examining the aspect of unreasonable delay which question has been raised by the learned advocate for the petitioner. Learned advocate for the petitioner Mr. Desai has also relied on the decision of this court as well as of the apex court in support of his case. In case of Evergreen Apartment Coop. Housing Society Ltd. v. Special Secretary Revenue Department, Government of Gujarat, 1991 (1) GLR 113, in case of Parshottam Ramaji Rathod v. DD Mistry reported in 1999 (2) GLH 310 as also in case of Shree Ravi Darshan Coop. Housing Society Ltd. versus P. Thakkar reported in 2000 (2) GLR 1639 and in case of Mohammad Kavi Mohamad Amin versus Fatmabai Ibrahim (supra) as well as in case of Keshavlal A. Mantar v.

Dy. Collector in Special Civil Application NO. 2323 of 1989 decided by this court on 16th June, 2000 as well as in case of Ganpat M. Shikari v. State of Gujarat delivered in special civil application no. 1778 of 1987 (Coram : Hon'ble Mr. Justice D.M. Dharmadhikari,C.J. on 3rd March, 2000.

I have also considered the principles laid down in Manchharam vs. SP Pathak and others in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983 wherein it has been observed that;

> "Where the power is conferred to effectuate a purpose, it has to been exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha and others (1970) 1 SCR 335."

As stated earlier, the apex court has also considered the power which has been exercised by the respondent authorities under sec.84C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December,1972, the suo motu inquiry started in Sept. 1973, it was held that suo motu power under section 84C not exercised within reasonable time.

In the present petition, learned advocate Mr. Desai has submitted that the sale deed has been executed between the parties in the year 1981 and, thereafter, more than two years have passed for initiating the proceedings by the Mamlatdar and ALT under sec.84C of the Act. Said transfer was registered in the record of rights; necessary entries were made in the revenue record. It has also been submitted that the petitioner has invested huge amount for development of the land in question. He has also submitted that the petitioner has remained in possession of the land in question for more than 20 years and the land is the sole source of livelihood. Considering the submissions of Mr. Desai, the impugned action initiated by the respondent authorities after such unreasonable period will take away the source of livelihood. Here, it should be noted that it is a petition of the year 1989 wherein till this date, the respondents have not cared to file the affidavit in reply controverting the averments of facts made by the petitioner. Therefore, this court has no option but to believe the contentions raised in this petition.

Therefore, in view of the decisions of the apex court as well as of this court referred to hereinabove, I am of the view that the respondent authorities are not justified in initiating the proceedings under sec.84C of the Act after unreasonable period of about two years and, therefore, on that ground alone, the other contentions raised herein are not required to be dealt with separately.

Consequently, the petitions succeed and are allowed accordingly. The orders passed by the authorities below dated 1st April, 1984 , 15thJuly, 1987 and 28th February, 1989 and 23rd June, 1989 (Annexure "A" to "D" are hereby quashed and set aside. Rule in each of the petitions is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 19.9.2000 (H.K. Rathod,J.)
Vyas